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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,336	01/30/2002	Guy Tiphane	9623V-027910	9840
20350 7590 03/14/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER WONG, ALLEN C	
			ART UNIT 2621	PAPER NUMBER
			MAIL DATE 03/14/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/066,336	<b>Applicant(s)</b> TIPHANE, GUY	
	<b>Examiner</b> Allen Wong	<b>Art Unit</b> 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 10-12, 18, 21-23, 26-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 10-12, 18, 21-23, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/26/07 have been fully read and considered but they are not persuasive.
2. Regarding lines 3-5 on page 6 of applicant's remarks, applicant stated that the claim 1 as amended would distinguish over the prior art. On the telephone interview on 12/11/07, the applicant discussed the differences of prior art versus the claims, but no agreement was reached pending a further search and consideration was needed. And after more search and consideration, claims 1 and 18 are still rejected for reasons as stated below. However, dependent claim 3 is objected to as containing patentable subject matter if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding lines 13-14 on page 6 of applicant's remarks, applicant asserts that Kaneko does not disclose sending substitute images in the absence of a call, then automatically sending the live images during a call. The examiner respectfully disagrees. In column 27, lines 44-57, Kaneko discloses the user has mode 3, where the user is interrupted for switching or toggling to the interlude mode 3 from the view mode 1 or 2. Then in column 20, lines 36-39, Kaneko discloses that when the user is not in view mode, the user can view image contents that were previously selected or viewed from the internet's world wide web WWW, thus, alternate non-live image data is substituted for viewing. Thus, Kaneko discloses sending substitute images in the absence of a call, then automatically sending the live images during communication or a

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call for permitting the viewing of live image data when communicating live. The combination of Anderson and Kaneko does provide the dual use of a webcam (sending images via Internet) and switching to a live view for a video conference function.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in art to combine the teachings of Anderson and Kaneko, as a whole, for providing a clear, convenient, easy-to-use high quality audio/visual data communication between users, as suggested in Kaneko's column 4, lines 14-17.

Thus, the rejection is maintained.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 10-12, 18, 21-23 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (6,567,122) and Kaneko (6,332,139).

Regarding claims 1 and 18, Anderson discloses a web cam system, comprising:

a digital camera for capturing an image of a user (col.5, ln.47-55),

wherein said digital camera is configured to generate image data (col.5, ln.47-52 and fig.1, note digital camera generates image data),

wherein said digital camera is configured to be connected with a computer (col.6, ln.5-6, element 118 of fig.1 is a computer), and

wherein said digital camera is configured to provide said image data to said computer (col.6, ln.5-8, note image data of object 112 is obtained and eventually sent to computer 118 in fig.1);

a computer useable medium encoded with computer executable instructions embodied therein for causing the interfacing of said digital camera with said computer (col.6, ln.5-6, fig.1, note computer 118 has computer executable instructions that causes the computer to execute instructions from as directed by the computer readable medium), said computer executable instructions comprising:

an image capturing computer readable program code portion configured to cause said computer to effect the capturing of said image, wherein said image comprises still or video images (col.6, ln.5-19); and

an internet interfacing computer readable program code portion configured to cause said computer to effect the transmittal of said image data, for incorporation of said image data into a web cam page, to a web site hosting said web cam page (col.5, ln.47-55 and col.9, ln.51 to col.10, ln.4); and

wherein the view mode provides live images from the digital camera (col.6, ln.5-19 and fig.6).

Anderson does not specifically disclose the limitation an interlude switch configured to be connected with said digital camera, wherein said interlude switch is configured to be toggled between a view mode and an interlude mode, and wherein said interlude mode provides at least one alternate image from a source other than a live image captured by said digital camera; wherein said interlude mode is active in the absence of a phone call by a user; wherein, upon detecting the initiation of a phone call by a user, said interlude switch switches to said view mode to provide said live image. However, Kaneko teaches the use of the interlude switch configured to be connected with the digital camera (col.27, ln.44-57, Kaneko discloses the user has mode 3, where the user is interrupted for switching to the interlude mode 3), wherein the interlude switch is configured to be toggled between the view mode and the interlude mode (col.27, ln.44-57, Kaneko discloses the user has mode 3, where the user is interrupted for switching or toggling to the interlude mode 3 from the view mode 1 or 2), and wherein the interlude mode provides at least one alternate image from a source other than a live image captured by the digital camera (col.20, ln.36-39, Kaneko discloses that when the user is not in view mode, the user can view image contents that were

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previously selected or viewed from the internet's world wide web WWW, thus, alternate non-live image data is viewed); wherein the interlude mode is active in the absence of a phone call by a user (col.20, ln.36-39, Kaneko discloses that when the user is not in view mode, the user can view image contents that were previously selected or viewed from the internet's world wide web WWW, thus, the system is always active awaiting the next incoming call or communication); wherein, upon detecting the initiation of a phone call by a user, the interlude switch switches to the view mode to provide the live image (fig.1, Kaneko discloses the initiation of a live transmission or communication between user 1 and user 2 for audio/visual communication via the HTML or WWW for providing live image data during the live communication). Therefore, it would have been obvious to one of ordinary skill in art to combine the teachings of Anderson and Kaneko, as a whole, for providing a clear, convenient, easy-to-use high quality audio/visual data communication between users (Kaneko col.4, ln.14-17).

Regarding claim 2, the web cam system of claim 2 is met by Anderson in view of Kaneko with respect to the same analysis as discussed in claim 1.

Regarding claim 4, the web cam system of claim 4 is met by Anderson in view of Kaneko with respect to the same analysis as discussed in claim 1.

Regarding claim 26, the web cam system of claim 26 is met by Anderson in view of Kaneko with respect to the same analysis as discussed in claim 1.

Regarding claim 27, the web cam system of claim 27 is met by Anderson in view of Kaneko with respect to the same analysis as discussed in claim 1

Regarding claim 10, Anderson discloses the preselected images are one of: still images, slide shows, video images, commercials, or images captured by another web cam system (col.5, ln.47-55).

Regarding claims 11 and 21-23, Anderson discloses preselected images are stored on the computer (col.5, ln.47-55 and 57-60, Anderson discloses storage of image data, and the use of multiple cameras). Anderson does not disclose "interlude mode", but Kaneko does. See analysis of claim 1.

Regarding claim 12, Anderson discloses the preselected images are stored at a remote site (col.5, ln.47-55).

#### ***Allowable Subject Matter***

3. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



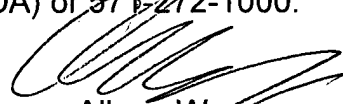
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen Wong whose telephone number is (571) 272-7341. The examiner can normally be reached on Mondays to Thursdays from 8am-6pm Flextime.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Allen Wong  
Primary Examiner  
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AW

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